

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER KELLY AND ARLEEN KELLY,

Plaintiff,

-AGAINST-

THE CITY OF NEW YORK, POLICE OFFICER
EUGENE CHOI, SHIELD #365, NEW YORK CITY
JOHN AND JANE DOE POLICE OFFICERS,

Defendants.

**ANSWER TO PLAINTIFF'S
COMPLAINT ON BEHALF
OF DEFENDANTS CITY OF
NEW YORK AND EUGENE
CHOI**

15 Civ. 00053(CM)

JURY TRIAL DEMAND

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Defendants City of New York ("City") and Eugene Choi, by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for their answer to the Plaintiff's Complaint ("Complaint"), respectfully allege, upon information and belief, as follows:

1. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph "1" of the complaint, except admit that Plaintiff purports to proceed as stated therein.

2. Deny the allegations set forth in paragraph "2" of the complaint.

3. Deny the allegations set forth in paragraph "3" of the complaint.

4. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph "4" of the complaint.

5. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph "5" of the complaint.

6. Deny the allegations set forth in paragraph “6” of the complaint, except admit that the City of New York is a municipal corporation organized pursuant to the laws of the State of New York.

7. The allegations set forth in paragraph “7” of the complaint contain legal conclusions to which no response is required. Notwithstanding, and to the extent a response is required defendants deny the allegations set forth in paragraph “7” of the complaint, except admit that Eugene Choi was employed by the City of New York as a police officer at the time of the incident alleged in the complaint.

8. Deny the allegations set forth in paragraph “8” of the complaint.

9. Deny the allegations set forth in paragraph “9” of the complaint, except admit that Plaintiff purports to proceed as stated therein.

10. Deny the allegations set forth in paragraph “10” of the complaint, except admit that Plaintiff purports to proceed as stated therein and invoke the jurisdiction of the Court as stated therein.

11. Deny the allegations set forth in paragraph “11” of the complaint, except admit that Plaintiff purports to proceed as stated therein and invoke the jurisdiction of the Court as stated therein.

12. Deny the allegations set forth in paragraph “12” of the complaint, except admit that Plaintiff purports to proceed as stated therein and invoke the jurisdiction of the Court as stated therein.

13. Deny the allegations set forth in paragraph “13” of the complaint, except admit that Plaintiff purports to proceed as stated therein and invoke the jurisdiction of the Court as stated therein.

14. Deny the allegations set forth in paragraph “14” of the complaint, except admit that a Notice of Claim was received by the City of New York.

15. Deny the allegations set forth in paragraph “15” of the complaint, except admit that a Notice of Claim was received by the City of New York.

16. Deny the allegations set forth in paragraph “16” of the complaint, except admit that a Notice of Claim was received by the City of New York.

17. Deny the allegations set forth in paragraph “17” of the complaint, except admit that a Notice of Claim was received by the City of New York.

18. Deny the allegations set forth in paragraph “18” of the complaint, except admit that a Notice of Claim was received by the City of New York.

19. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “19” of the complaint.

20. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “20” of the complaint.

21. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “21” of the complaint.

22. Deny the allegations set forth in paragraph “22” of the complaint.

23. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “23” of the complaint.

24. Deny the allegations set forth in paragraph “24” of the complaint.

25. Deny the allegations set forth in paragraph “25” of the complaint.

26. Deny the allegations set forth in paragraph “26” of the complaint.

27. Deny the allegations set forth in paragraph “27” of the complaint.

28. Deny the allegations set forth in paragraph “28” of the complaint.
29. Deny the allegations set forth in paragraph “29” of the complaint.
30. Deny the allegations set forth in paragraph “30” of the complaint.
31. Deny the allegations set forth in paragraph “31” of the complaint.
32. Deny the allegations set forth in paragraph “32” of the complaint.
33. Deny the allegations set forth in paragraph “33” of the complaint.
34. Deny the allegations set forth in paragraph “34” of the complaint.
35. Deny the allegations set forth in paragraph “35” of the complaint.
36. Deny the allegations set forth in paragraph “36” of the complaint.
37. Deny the allegations set forth in paragraph “37” of the complaint.
38. Deny the allegations set forth in paragraph “38” of the complaint.
39. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “39” of the complaint.
40. Deny the allegations set forth in paragraph “40” of the complaint.
41. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “41” of the complaint.
42. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “42” of the complaint.
43. Deny the allegations set forth in paragraph “43” of the complaint.
44. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “44” of the complaint.
45. Deny the allegations set forth in paragraph “45” of the complaint.

46. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “46” of the complaint.

47. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph “47” of the complaint.

48. Deny the allegations set forth in paragraph “48” of the complaint.

49. Deny the allegations set forth in paragraph “49” of the complaint.

50. Deny the allegations set forth in paragraph “50” of the complaint.

51. Deny the allegations set forth in paragraph “51” of the complaint.

52. In response to the allegations set forth in paragraph “51” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “52” inclusive of their answer, as is fully set forth herein.

53. Deny the allegations set forth in paragraph “53” of the complaint.

54. Deny the allegations set forth in paragraph “54” of the complaint.

55. Deny the allegations set forth in paragraph “55” of the complaint.

56. In response to the allegations set forth in paragraph “56” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “55” inclusive of their answer, as is fully set forth herein.

57. Deny the allegations set forth in paragraph “57” of the complaint.

58. Deny the allegations set forth in paragraph “58” of the complaint.

59. Deny the allegations set forth in paragraph “59” of the complaint.

60. Deny the allegations set forth in paragraph “60” of the complaint.

61. Deny the allegations set forth in paragraph “61” of the complaint.

62. Deny the allegations set forth in paragraph “62” of the complaint.

63. Deny the allegations set forth in paragraph “63” of the complaint.

64. The allegations set forth in paragraph “64” of the complaint contain legal conclusions to which no response is required.

65. Deny the allegations set forth in paragraph “65” of the complaint.

66. In response to the allegations set forth in paragraph “66” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “65 ” inclusive of their answer, as is fully set forth herein.

67. Deny the allegations set forth in paragraph “67” of the complaint.

68. Deny the allegations set forth in paragraph “68” of the complaint.

69. Deny the allegations set forth in paragraph “69” of the complaint.

70. Deny the allegations set forth in paragraph “70” of the complaint.

71. Deny the allegations set forth in paragraph “71” of the complaint.

72. In response to the allegations set forth in paragraph “72” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “71” inclusive of their answer, as is fully set forth herein.

73. Deny the allegations set forth in paragraph “73” of the complaint.

74. Deny the allegations set forth in paragraph “74” of the complaint.

75. The allegations set forth in paragraph “75” contain legal conclusions to which no response is required.

76. Deny the allegations set forth in paragraph “76” of the complaint.

77. Deny the allegations set forth in paragraph “77” of the complaint.

78. In response to the allegations set forth in paragraph “78” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “77” inclusive of their answer, as is fully set forth herein.

79. Deny the allegations set forth in paragraph “79” of the complaint.

80. Deny the allegations set forth in paragraph “80” of the complaint.

81. Deny the allegations set forth in paragraph “81” of the complaint.

82. Deny the allegations set forth in paragraph “82” of the complaint.

83. In response to the allegations set forth in paragraph “83” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “82” inclusive of their answer, as is fully set forth herein.

84. In response to the allegations set forth in paragraph “84” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “83” inclusive of their answer, as is fully set forth herein.

85. Deny the allegations set forth in paragraph “85” of the complaint.

86. Deny the allegations set forth in paragraph “86” of the complaint.

87. Deny the allegations set forth in paragraph “87” of the complaint.

88. In response to the allegations set forth in paragraph “88” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “89” inclusive of their answer, as is fully set forth herein.

89. Deny the allegations set forth in paragraph “89” of the complaint.

90. Deny the allegations set forth in paragraph “90” of the complaint.

91. Deny the allegations set forth in paragraph “91” of the complaint.

92. Deny the allegations set forth in paragraph “92” of the complaint.

93. Deny the allegations set forth in paragraph “93” of the complaint.

94. In response to the allegations set forth in paragraph “94” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “93” inclusive of their answer, as is fully set forth herein.

95. Deny the allegations set forth in paragraph “95” of the complaint.

96. Deny the allegations set forth in paragraph “96” of the complaint.

97. Deny the allegations set forth in paragraph “97” of the complaint.

98. Deny the allegations set forth in paragraph “98” of the complaint.

99. In response to the allegations set forth in paragraph “99” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “98” inclusive of their answer, as is fully set forth herein.

100. Deny the allegations set forth in paragraph “100” of the complaint.

101. Deny the allegations set forth in paragraph “101” of the complaint.

102. Deny the allegations set forth in paragraph “102” of the complaint.

103. In response to the allegations set forth in paragraph “103” of the complaint, defendants repeats and realleges the responses set forth in paragraphs “1” through “102” inclusive of their answer, as is fully set forth herein.

104. Deny the allegations set forth in paragraph “104” of the complaint.

105. Deny the allegations set forth in paragraph “105” of the complaint.

106. Deny the allegations set forth in paragraph “106” of the complaint.

107. Deny the allegations set forth in paragraph “107” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

108. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

109. Defendants City and Choi have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

110. Any injury alleged to have been sustained resulted from Plaintiffs' own culpable or negligent conduct or the culpable or negligent conduct of non-parties or third parties, and was not the proximate result of any act of Defendants City or Choi.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

111. At all times relevant to the incident, Defendants City and its employees and officials acted reasonably and in the proper and lawful exercise of their discretion. As such, Defendants City is entitled to governmental immunity.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

112. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

113. Punitive damages cannot be recovered as against the City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

114. There was probable cause for Plaintiffs' arrests, detentions, and any purported prosecutions.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE:

115. Plaintiffs provoked any incident.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE:

116. Plaintiffs' claims may in whole or in part be barred by the doctrines of *res judicata* and/or *collateral estoppel*.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

117. Plaintiffs may have failed to comply with conditions precedent to suit, including General Municipal Law § 50-e, § 50-h and § 50-i.

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE:

118. Plaintiffs' claims may in whole or in part be barred by the applicable statute of limitations.

AS AND FOR AN THIRTEENTH AFFIRMATIVE DEFENSE:

118. Defendant Choi has not violated any clearly established constitutional or statutory rights of which a reasonable person would have known, and are therefore protected by qualified immunity.

WHEREFORE, Defendants City of New York and Choi request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 26, 2015

Zachary W. Carter
Corporation Counsel of the City of New York
Attorney for Defendants City of New York
100 Church Street Rm. 3-200
New York, NY 10007

By: /s/
Beth Hoffman
Senior Counsel

To: Steven G. Storch, Esq. (By ECF)
Attorney for Plaintiff

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SOUTHERN DISTRICT OF NEW YORK

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**ANSWER TO THE COMPLAINT ON BEHALF OF
DEFENDANTS CITY OF NEW YORK AND EUGENE
CHOI**

ZACHARY W. CARTER

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Attorney for Defendants City of New York
New York, N.Y. 10007*

*Of Counsel: Beth Hoffman
Tel: (212) 356-2372*

Due and timely service is hereby admitted.

New York, N.Y., 2015

..... Esq.

Attorney for